Willamette Industries, Inc. and Weyerhaeuser Company, a Golden State Successor *and* Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, CLC. Cases 26–CA–19667, 26–CA–19675, 26–CA–19676, 26–CA–19693, 26–CA–19745, and 26–CA–19774

March 31, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On April 21, 2003, Administrative Law Judge Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed exceptions, a supporting brief and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order as modified and set forth in full below.

I. INTRODUCTION

The judge found, among other things, that the Respondent violated Section 8(a)(3) and (1) of the Act by adversely changing the work schedules of a group of its corrugator employees in retaliation for their protected union activity. For the reasons discussed below, we agree with the judge that the General Counsel sustained his burden, under *Wright Line*,[3] of establishing that the Respondent's union animus was a motivating factor in its decision to change the work schedules of the corrugator employees, and that the Respondent failed to meet its burden of demonstrating that it would have implemented the shift change even absent the union activity. We shall modify the judge's remedy for this violation to include the traditional remedy for a discriminatory change in working conditions, i.e., restoration of the status quo ante, and the payment of backpay.

II. APPLICABLE FACTS

A. Background and Procedural History

The Respondent operates a corrugated packaging facility in Fort Smith, Arkansas.[4] On October 8, 1999, the Union filed a petition to represent employees at that facility, and the Board held a representation election on November 19, 1999. The November 19 election had a tally of ballots showing 55 votes for the Union, 58 against, and 7 challenged ballots. The Union filed election objections, and the parties subsequently agreed to hold a second election, which occurred on February 11, 2000.

The tally of ballots of the February 11 election showed 56 votes for the Union, 51 against, and 5 challenged ballots. The Respondent filed objections, and on June 23, 2000, following a hearing to resolve the objections and challenges, the hearing officer recommended certifying the Union as the employees' representative. However, on October 1, 2001, the Board reversed the hearing officer and directed that certain of the challenged ballots be opened and counted.[5] The revised tally showed that the votes were tied, and thus the Union was not certified as the employees' collective-bargaining representative.

Shortly before the first election, the Respondent's supervisors repeatedly threatened employees with adverse consequences if the Union were elected. Specifically, Supervisor Terry Cockrum told employees that (1) they would lose pension benefits and their insurance premiums would increase if the Union were elected; (2) the

[1] We deny the Respondent's motion for leave to file an amended answer to the complaint to deny that Terry Cockrum is an agent of the Respondent within the meaning of Sec. 2(13) of the Act. In its answer to the complaint, the Respondent admitted that Cockrum is a supervisor, within the meaning of Sec. 2(11) of the Act. It is well settled that a 2(11) supervisor is a 2(13) agent of that employer. E.g., *Excel DPM of Arkansas*, 324 NLRB 880 fn. 2 (1997).

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

No exceptions were filed to the judge's finding that the Respondent violated Sec. 8(a)(1) in several respects, discussed below in sec. II,(a). Likewise, no exceptions were filed to the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) by disciplining union employees Mark Standridge and Henry Blasingame because of their union activities. Finally, no exceptions were filed to the judge's dismissal of the allegation that Human Resources Manager Tom McIntyre violated Sec. 8(a)(1) of the Act.

[3] See *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

[4] At the time of the conduct at issue in this case, Willamette owned the facility in question. However, on March 15, 2002, Weyerhaeuser purchased Willamette's Fort Smith facility and Willamette was later dissolved as a legal entity. It is undisputed that Weyerhaeuser is the legal successor to Willamette and was aware of Willamette's potential liability at the time of the purchase.

[5] The Board directed that two of the ballots be opened and counted. The Union agreed to withdraw its challenges to the three other challenged ballots.

Respondent would close the plant if the Union won the election; (3) employees distributing union literature would be arrested; (4) employees should not discuss union business on the Respondent's property; (5) the Respondent was monitoring the employees' actions; (6) employees who were union supporters would be discharged and the Respondent would arbitrate every case if the Union won the election; and (7) a supervisor had the right to run over an employee with a vehicle, or to shoot an employee with a gun, if the employees picketed Respondent's entrance gate. The judge found that this conduct violated Section 8(a)(1) of the Act, and there are no exceptions to these findings.

Additionally, the judge found that the Respondent violated Section 8(a)(1) when, on three occasions before the first election and twice before the second election, Supervisor Cockrum threatened first shift corrugator employees that the Respondent would go to a "rotating shift" if the Union won the election.

B. The Respondent's Implementation of the Change in Shift Schedule

Prior to June 26, 2000, the Respondent operated two nonrotating 10-hour shifts per day for its 16 to 18 corrugator employees. For 4 to 5 days a week (depending on overtime needs), the two groups of employees worked 10 hours per day (and sometimes up to 12 hours) on both the day and night shifts. The employees were given the opportunity to bid for their shift preference, based on seniority, so that the employees with more seniority generally worked on the day shift, while the less senior employees worked the night shift. Under this schedule, employees on the day shift routinely worked at least 10 hours of overtime a week.

The Respondent asserts that, in mid-October 1999, in preparation for its annual budget meeting the Respondent's management officials began contemplating adding a third shift of employees to the corrugator operation. According to the Respondent, it discussed this change as a means of accommodating an anticipated increase of business in the next several years, and as a way to decrease its overtime demands on current employees, and to sufficiently staff a new machine (Flex-O machine). The Respondent asserts that it ultimately decided to adopt a schedule similar to one implemented by a local automobile plant, where three shifts of employees rotated between day and night shifts.

The Respondent contends that it decided to implement the new schedule in mid-October 1999, when it presented its 5-year projection of production growth at the Respondent's annual business meeting. In mid-November, the Respondent placed an order for the Flex-O machine, and the machine was purchased in January. However, the Respondent did not announce the implementation of the schedule change until March 2000, and did not begin implementing the new schedule until July 2000.

At the time that the Respondent was contemplating this shift change, the judge found that Supervisor Terry Cockrum had repeatedly threatened employees on the first shift (all of whom were known to be union supporters) that the Respondent would make the shift change if the Union prevailed in the election. On November 1, 1999 (2 weeks prior to the first election), Cockrum told the first shift employees that they "needed to kind of let this [union] thing blow over or you may possibly go to a rotating shifts." On November 22, 1999 (3 days after the first representation election), Cockrum told another employee that "they were going to a rotating shift and [would] lose benefits because of the Union" and that "the front office is mad because of the Union." That same day, Cockrum told the employees in the first shift that "they were lucky this [Union] thing did not go through because [General Manager] Rick Davis would have put you on a rotating shift."

In mid-March 2000,[6] less than 1 month after the second election, the Respondent announced to the corrugator employees that it would add a third shift and that all three shifts would begin rotating. Over the next few months, the Respondent posted several corrugator positions for hire and began to train new employees. On April 5, Cockrum told the employees under his supervision that the Respondent was going to change to rotating shifts because "the Company wanted to show the people who were [sic] in charge." On May 2, Cockrum came into the control room and told several employees that "Rick Davis had told him that if they keep trying to get the Union in, they were going to rotating shifts." When one of the employees asked why the first shift was being singled out when the election had split 50/50, Cockrum replied because they "were 100% Union and the crew was being ram-butted."

On June 23, the hearing officer issued his report recommending that the Union be certified as the employees' collective-bargaining representative. Three days later, on June 26, the Respondent implemented rotating shifts for all of its corrugator employees.

When the Respondent implemented the rotating three-shift schedule, it utilized an additional shift of eight newly hired employees, and put all three shifts on a rotating schedule. Although the Respondent maintained a schedule similar to the old one, the employees lost their ability to work solely on the day or night shift. Thus,

[6] All dates hereafter refer to 2000.

after June 26, 2000, all employees were required to work four 10-hour days per week, alternating weekly (and sometime daily) between the day and night shifts.

The change to the rotating shifts disproportionately affected the first shift (day-shift) employees, all of whom were known by the Respondent to be active union supporters. The first shift employees lost the ability to bid for their preference in shifts by seniority. They also lost approximately 10 to 20 hours of overtime per week.

III. ANALYSIS

Applying *Wright Line*, 251 NLRB 1083 (1980), we agree with the judge that the Respondent's implementation of a third, rotating shift constituted a discriminatorily motivated adverse change in working conditions in violation of Section 8(a)(3) and (1) of the Act. The record contains compelling evidence of the Respondent's discriminatory motive in instituting this change. Specifically, that motive is demonstrated by the Respondent's uncontested violations of the Act, including the direct threats of this retaliatory action, and by the timing of its decision. We further find that the Respondent has failed to meet its burden of demonstrating that it would have implemented the change, as it did on June 26, 2000, in the absence of the employees' protected activity.

A. The General Counsel's Initial Burden

To establish that the Respondent violated Section 8(a)(3) and (1) by implementing a change in the employees' work schedules, the General Counsel has the initial burden of establishing that the employees' union activity was a motivating factor in the Respondent's decision to implement the change. *See Wright Line*, supra, 251 NLRB at 1089. The elements commonly required to support such a showing are union activity by the employee or employees, employer knowledge of that activity, and antiunion animus by the employer. *Wal-Mart Stores*, 340 NLRB No. 31 (2003), slip op. at 2 (citing *Briar Crest Nursing Home*, 333 NLRB 935, 936 (2001)).

The record clearly demonstrates that the employees' union activity was a motivating factor in the Respondent's decision to implement the schedule change. It is uncontested that the employees most affected by the change, the first shift corrugator crew, unanimously supported the Union and that the Respondent was aware of their support. Indeed, the entire first shift of corrugator employees demonstrated their unanimous union support by wearing black prounion T-shirts on the day of the first election. Additionally, the Respondent's knowledge of the employees' prounion status was demonstrated by supervisor Cockrum's statement to employees—a few weeks before the implementation of the new schedule—that the first schedule employees were being singled out because they "were 100% Union and the crew was being ram-butted."

The evidence that the Respondent harbored considerable animus towards the Union is substantial. As stated above, the Respondent engaged in numerous violations of Section 8(a)(1), including threats of adverse consequences if the Union prevailed in the elections, and also violated Section 8(a)(3) by disciplining employees because of their union activities.[7] These violations demonstrate the Respondent's considerable hostility towards the Union's organizational efforts.

Additionally, we find it significant that the Respondent announced the change shortly after the second election was held, when the initial tally of ballots favored the Union, and implemented the schedule change just days after the hearing officer recommended certifying the Union. The timing of both the announcement and the implementation of the shift change further indicate that the shift change was motivated by the Respondent's hostility towards the employees' union activity. See *Excel-Container, Inc.*, 325 NLRB 17, 27 (1997) (quoting *NLRB v. Rain-Ware, Inc.*, 732 F.2d 1349, 1354 (7th Cir. 1984) ("Timing alone may suggest anti-union animus as a motivating factor in an employer's actions.")).

Further, the suspicious timing of the Respondent's announcement and implementation was accompanied by Supervisor Cockrum's contemporaneous threats that the Respondent would implement the schedule change if the employees continued to support the Union or if the Union prevailed in the election. These direct threats of retaliatory action, particularly when followed by the fulfillment of the threat, constitute strong circumstantial evidence of unlawful motivation.

The Respondent argues that there is little significance to Cockrum's unlawful statements because he played no part in the decision-making process and the decision makers were unaware of those statements. However, it is not necessary for the General Counsel to show that the decision makers had direct knowledge of those statements in order to show that the decision was motivated by animus. See, e.g., *Turnbull Cone Baking Co. of Tennessee v. NLRB*, 778 F.2d 292, 297 (6th Cir. 1985) (unlawful motive shown "where an employer's representatives have announced an intent . . . to retaliate against an employee for engaging in protected activity), cert. denied 476 U.S. 1159 (1986). The more pertinent question is whether Cockrum's statements accurately reflected the Respondent's intentions. As the judge found, the timing of Cockrum's statements, at the precise moment that the decision makers decided to implement the

[7] See fn. 1, above.

rotating shifts, strongly suggests that Cockrum was privy to that decision-making process. But, even if he were not privy, his statement to employees that General Manager Rick Davis would have put them on a rotating shift if the Union won the election, adds further support to the inference that Cockrum's statements accurately reflected the Respondent's intentions.

In sum, in light of the substantial evidence set forth above, the General Counsel has established by very strong evidence that the Respondent's antiunion animus was a motivating factor in its decision to implement a new schedule for the corrugator employees on June 26, 2000.

B. The Respondent's Defense

Where, as here, the General Counsel makes an initial showing under *Wright Line*, the burden shifts to the Respondent to establish that it would have taken the same action even in the absence of union activities. *Wright Line*, 251 NLRB at 1089. An employer cannot sustain its *Wright Line* burden simply by showing that there was a legitimate reason for the action; it must affirmatively demonstrate that the action would have taken place even absent the protected conduct. *Centre Property Management*, 277 NLRB 1376 (1985); *Roure Betrand Dupont, Inc*., 271 NLRB 443 (1984).

Contending that it sustained its burden here, the Respondent maintains that it made the decision to add a third, nonrotating shift in mid-October 1999, after reviewing its production forecasts for an annual budget meeting. We find that the record is too ambiguous to find that the Respondent has met its burden. The evidence indicates that the Respondent was *considering* the shift changes in mid-October; however, the evidence fails to demonstrate that the decision to implement the changes was *actually made* at that time. General Manager Rick Davis testified that the decision was made "in the first part of October, you know, through the, you know, December period of time." Production Manager Rick Hicks initially testified that the decision was made in mid-October, but later testified that the "final decision" to implement the schedule change was made in March 2000. Such conflicting testimony does not establish that the Respondent's decision to implement the shift change was made at a time before the Respondent was aware of the union sentiments of its employees, particularly in light of the threats made by Supervisor Cockrum.

Moreover, the Respondent has failed to explain why, if the decision to implement the shift change was made in October, it did not implement the change at that time. Nor does it explain why it did not announce the change at that time.

After waiting 5 months to announce the change to employees, the Respondent waited another 3 months after that before implementing the change. The Respondent offers two explanations for the lapse in time between its decision to make the schedule change and the implementation of that change. The Respondent first asserts that it was waiting for business to pick up before implementing the changes, because the fourth quarter of every year was a slow time. The Respondent further maintains that it was attempting to make the implementation of the changes coincide with the procurement of the new "Flex-O" machine. We find neither explanation persuasive.

First, the Respondent did not merely wait until after the traditional fourth quarter slump before implementing the shift change. Rather, without any explanation, the Respondent waited until the end of the second quarter of the following year before implementing the change.

Second, the record shows that the Respondent bought the new Flex-O machine in January 2000, a full 6 months' prior to the Respondent's implementation of the schedule change. At best, the Respondent offered an explanation for the 3-month delay between the March announcement and the June implementation of the shift change—that it was attempting to coordinate the implementation of the shift change with the procurement of the Flex-O machine. Even assuming that this explanation is legitimate, it fails to account for the 3 months between the January purchase of the machine and the March announcement of the shift change.

The Respondent's failure to offer a plausible explanation for the delay of the announcement and implementation of the shift change undermines its assertion that the decision was made for production reasons and tied to the annual meeting in mid-October. Instead, it suggests that the decision to implement the shift change, even assuming it had been considered at an earlier date, was actually made when it was announced to the employees in March 2000, shortly after the second election. Indeed, when considered together with the timing of the announcement, shortly after the second election, the absence of a plausible explanation gives rise to the inference that the Respondent was waiting for the results of the second election to implement the changes so as to retaliate against the employees. Supervisor Cockrum's statements to employees that the Respondent implemented the shift change in response to the employees' support for the Union supports this inference.

Thus, in view of the foregoing evidence, we find that the Respondent has failed to rebut the General Counsel's strong showing that the change was discriminatorily motivated. Accordingly, we adopt the judge's finding that

the Respondent's implementation of the shift changes violated Section 8(a)(3) and (1) as alleged.[8]

THE AMENDED REMEDY

In his recommended Order, the judge did not require the Respondent to restore the former shifts that existed prior to the unlawful schedule change implemented on June 26, 2000, and did not require the Respondent to make whole the affected employees with backpay for wages lost as a result of the unlawful schedule change. The judge reasoned that such a remedy was unwarranted because the General Counsel did not request that remedy.[9] In his exceptions, the General Counsel argues that, contrary to the judge's assertions, a make-whole remedy was, in fact, requested, and therefore a backpay remedy is warranted.[10]

We agree with the General Counsel that the employees are entitled to backpay to compensate them for their loss of income that occurred as a result of the adverse schedule change. We also find that an order requiring the Respondent to reinstitute its prior schedule is warranted.

The traditional remedy for an adverse change of employee working conditions in violation of Section 8(a)(3) is to restore the status quo ante for the affected employees. See, e.g., *Wal-Mart Stores*, 340 NLRB No. 31, slip op. at 19 (2003)*; Illiana Transit Warehouse Corp.*, 323 NLRB 111, 123 (1997); *Schaumburg Hyundai, Inc.*, 318 NLRB 449, 460 (1995). In order to restore the status quo ante for the affected employees in this case, the remedy must include both backpay, to compensate the affected employees for the loss of overtime suffered as a result of the schedule change, and the reinstitution of the schedule that existed prior to June 26, 2000 (i.e., two nonrotating shifts). Although the General Counsel did not explicitly request the restoration of the prior schedule, the restoration requirement is necessary to make employees whole, and to provide a tolling date for the Respondent's backpay liability.

Our dissenting colleague asserts that a restoration of the Respondent's prior two-shift schedule is inappropriate and unfair because neither party has requested that remedy. However, it is well established that the General Counsel's failure to seek a specific remedy does not limit the Board's authority under Section 10(c) of the Act to fashion an appropriate make-whole remedy. The Board may grant such a remedy as will effectuate the purposes of the Act, whether the remedy is specifically requested or not. *Kaumagraph Corp*., 313 NLRB 624, 625 (1994); *Schnadig Corp*., 265 NLRB 147 (1982); *Dean General Contractors*, 285 NLRB 573 fn. 5 (1987). Our colleague further contends that the remedy is unfair because the General Counsel's failure to request a restoration remedy before the judge has left the Respondent without an opportunity to argue that the restoration of the prior shifts would be unduly burdensome. Our colleague's contention is unavailing. The Respondent is free to argue this point, should it so choose, at the compliance stage of this proceeding.

Accordingly, we shall order the Respondent to make whole those corrugator employees adversely affected by the unlawful shift change for lost pay and overtime suffered from the date of the implementation of the new schedule on June 26, 2000, until the date that the Respondent restores the schedule that existed prior to June 26, 2000.

ORDER

The National Labor Relations Board orders that the Respondents, Willamette Industries, Inc., Portland, Oregon, and its *Golden State* successor, Weyerhaeuser Company, Federal Way, Washington, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with loss of their 401(k) retirement plan if they support Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, CLC, or any other labor organization.

(b) Threatening its employees with increased insurance premiums because of their union activities.

(c) Offering to bet its employees that the employees would lose their 401(k) retirement plan because of their union activities.

(d) Threatening its employees their work and nonwork activities are being closely monitored and watched by management.

(e) Threatening its employees that the plant would be shut down if the employees go out on strike.

(f) Threatening its employees that it will call the police if they engage in hand billing at its facility.

(g) Threatening its employees that they will be the first ones out the door if the Union did not get in.

(h) Threatening its employees that some employees will be in trouble because of their union activities, and that it would arbitrate every case if the Union got in.

[8] In so doing, we find it unnecessary to pass on the judge's finding that the Respondent failed to consider other alternatives to the three rotating shifts. We also find it unnecessary to pass on the judge's analysis of the Respondent's productivity records in rebutting the Respondent's case.

[9] The judge did require the Respondent to cease and desist from this conduct and to post a notice to employees.

[10] The General Counsel's exceptions do not address whether the prior shifts should be restored.

(i) Threatening its employees that its supervisor had the right to run over and shoot employees if they picketed at the gate.

(j) Threatening its employees that its corrugator employees will go to a rotating shift if the Union is elected.

(k) Imposing disciplinary counseling or warnings on its employees, because of their union activities.

(l) Changing the work schedules of its corrugator employees, because of their union activities.

(m) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings issued to Mark Standridge and Henry Blasingame, and within 3 days thereafter, notify Standridge and Blasingame in writing that this has been done and that the warnings will not be used against either of them in any way.

(b) Reinstitute the schedule in effect for the corrugator employees at its Fort Smith, Arkansas facility in a manner consistent with operations prior to June 26, 2000.

(c) Make whole all corrugator employees who were adversely impacted by the schedule change for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 173 (1987).

(d) Within 14 days after service by the Region, post at its facility or office in Fort Smith, Arkansas, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employee are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the course of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 2001.

[11] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. March 31, 2004

Wilma B. Liebman,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN BATTISTA, dissenting in part.

I agree with my colleagues that the Respondent violated Section 8(a)(3) of the Act by instituting a change in the employees' work schedules because of their union activity, and that the affected employees should be made whole for their loss of wages and overtime. Contrary to my colleagues, however, I would not require the reinstatement of the prior schedule.

Neither the General Counsel nor the Union sought this remedy at the hearing before the judge. The Respondent and the apparent successor (Weyerhaeuser), therefore, did not have the opportunity to argue and present evidence before the judge that a restoration of the prior schedule would be inappropriate. In addition, more than 3 years have passed since this violation occurred. In the meantime, a new company has taken over the Respondent's operations. Although that company (Weyerhaeuser) was named in the complaint and had an opportunity to defend against the allegation, it was not placed on notice that the remedy would include restoration of the prior schedule. Notwithstanding this, my colleagues impose this remedy on the Respondent and on Weyerhaeuser. In my view, that is fundamentally unfair, and a denial of due process, to both the Respondent and Weyerhaeuser.

Finally, my colleagues say that my concerns can be addressed in compliance proceedings. I would address the issue now. The present issue is whether a restoration order is appropriate. The issue in compliance would be whether the Respondent has *complied* with the order. In short, my colleagues have entered the order. It is therefore appropriate, at this juncture, to voice my objection thereto.

Finally, my colleagues contend that requiring the restoration of the status quo ante is necessary to provide a tolling date for the Respondent's backpay liability. I disagree. The Respondent or Weyerhaeuser can toll backpay by (1) voluntarily reinstituting its prior sched-

ule, or (2) establishing in compliance that, at some point, it would have changed to the new system, even in the absence of protected activity.

Dated, Washington, D.C. March 31, 2004

Robert J. Battista, Chairman

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit or protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten our employees with loss of their 401(k) retirement plan if they support Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, CLC or any other labor organization.

WE WILL NOT threaten our employees with increased insurance premiums because of their union activities.

WE WILL NOT offer to bet our employees that they would lose their 401(k) retirement plan, because of their union activities.

WE WILL NOT threaten our employees that their work and nonwork activities are being closely monitored and watched by management.

WE WILL NOT threaten our employees that the plant will be shut down if the employees go out on strike.

WE WILL NOT threaten our employees that we will call the police if they engage in hand billing at our facility.

WE WILL NOT threaten our employees that they will be the first ones out the door if the Union does not get in.

WE WILL NOT threaten our employees that some employees will be in trouble because of our their union activities, and that we will arbitrate every case if the Union gets in.

WE WILL NOT threaten our employees that our supervisor has the right to run over and shoot employees if they picketed at the gate.

WE WILL NOT threaten that our corrugator employees will be placed on a rotating shift if the Union is elected.

WE WILL NOT impose disciplinary counseling or warnings on our employees because of their union activities.

WE WILL NOT change the work schedules of our corrugator employees, because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful warnings to Mark Standridge and Henry Blasingame and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the warnings will not be used against them in any way.

WE WILL reinstitute the schedule formerly in effect for the corrugator employees at the Fort Smith, Arkansas facility in a manner consistent with operations prior to June 26, 2000.

WE WILL make whole the corrugator employees employed at that time for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WILLAMETTE INDUSTRIES, INC. AND WEYERHAEUSER COMPANY

Susan Greenberg, Esq., for General Counsel.
Michael S. Mitchell, Esq., for Respondent.
***Carl Bush,** Esq.*, for Charging Party.

DECISION

PARGEN ROBERTSON, Administrative Law Judge. The hearing was held in these proceedings in Fort Smith, Arkansas, on January 13 and 14, 2003. I have considered the full record as well as briefs filed by General Counsel, Charging Party, and Respondent.

I. JURISDICTION

Respondent admitted the jurisdiction allegations. It admitted that Willamette is an Oregon corporation and it had a corrugated packaging facility located in Fort Smith, Arkansas, where until about March 15, 2002, it engaged in the manufacture of corrugated containers. At material times from March 15 until May 7, 2002, Willamette was a wholly owned subsidiary of Respondent Weyerhaeuser. Respondent Weyerhaeuser is a Washington corporation with a facility located in Fort Smith, Arkansas where it is engaged in the manufacture of corrugated containers. During the 12 months ending May 30, 2002, Respondent Willamette sold and shipped in the conduct of its Fort Smith operations and from that Arkansas facility goods valued in excess of $50,000 directly to points outside Arkansas; and during that same 12 months Respondent Willamette purchased

and received at its Fort Smith facility goods valued in excess of $50,000 from points directly outside Arkansas. During the 12 months ending November 30, 2002, Respondent Weyerhaeuser sold and shipped in the conduct of its Fort Smith operations and from that Arkansas facility goods valued in excess of $50,000 directly to points outside Arkansas; and during that same 12 months Respondent Weyerhaeuser purchased and received goods valued in excess of $50,000 from points directly outside Arkansas. At material times Respondents Willamette and Weyerhaeuser have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

About March 15, 2002, Respondent Weyerhaeuser purchased the business of Respondent Willamette and until May 7, 2002, continued to operate the business of Willamette as a wholly owned subsidiary in basically unchanged form. On about May 7, 2002, Weyerhaeuser merged with Willamette, dissolving the legal entity Willamette and since then has continued to operate the business of Willamette as the entity Weyerhaeuser in basically unchanged form. At a time before Respondent Weyerhaeuser purchased the business of Willamette, it was notified of the potential liability of Respondent Willamette in Cases 26–CA–19667, 26–CA–19675, 26–CA–19676, 26–CA–19693, 26–CA–19745, and 26–CA–19774. Respondent Weyerhaeuser has continued as the employing entity with notice of Respondent Willamette's potential liability of the unfair labor practices mentioned above and is a successor to Respondent Willamette.

II. LABOR ORGANIZATION

Respondents admitted that the Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Background

There was a change of ownership of the employer's manufacturing facility in early 2002. Weyerhaeuser purchased the facility from Willamette. Before the purchase Weyerhaeuser was put on notice of Willamette's potential liability in the unfair labor practices cases. Weyerhaeuser continued to operate the business.[1]

There were two union election campaigns before Weyerhaeuser's purchase. The first campaign concluded with an NLRB election on November 19, 1999. Determinative challenges and objections followed that election and the parties agreed to another election. The NLRB Regional Office held that February 11, 2000.

The Alleged 8(a)(1) Violations

Supervisor Cockrum

Terry Cockrum testified that he is a supervisor. He worked at the Fort Smith facility from 1978 and has been a supervisor from 1981 or 1982.

Threat of Loss of Pension Benefits:

Threat of an increase in insurance premiums

Wayne Christian was employed as a slitter operator during the union campaign. He worked for Willamette from 1991 until June 2002. As a slitter operator he worked alone in the slitter control room. Christian supported the Union from before the first petition was filed.[2] He kept contemporaneous notes of events including notes of an October 1, 1999 conversation he witnessed between Terry Cockrum and Henry Blasingame. Cockrum told Blasingame that he was going to lose his 401(k) and his insurance would go up if the Union came in.

Christian testified that Cockrum came in the slitter control room where Christian was working on November 1, 1999. Henry Blasingame, Cliff Battle, and Mark Horton were there as well. Cockrum said they would lose their 401(k) and their insurance would go up, if they went union. The next day, November 2, Cockrum again came in the control room. Cockrum repeated that the employees would lose their 401(k) and their insurance premiums would go up, if the Union came in. Terry Cockrum told Henry Blasingame that he would bet a $100 Blasingame would lose his 401(k) if the Union came in. Later on during that conversation Cockrum told Blasingame that he would promise him he would lose his 401(k).

Around November 1, and again on November 2 1999, Henry Blasingame was in the slitter control room. He was with Wayne Christian, Cliff Battles, Danny Person, Steve Kenny, and Terry Cockrum. Cockrum told them they would definitely lose their 401(k) and their insurance rates would go up because they were trying to get a union in the plant. On November 2, Blasingame was with Christian and Cockrum. Cliff Battles, Shane Doss, Steve Kenny, and Mark Horton came in the room and Cockrum reminded them of what he had said about losing their 401(k) and having their insurance premiums increased. He said that Rick Davis[3] had said those things. Blasingame replied that he understood that the Company couldn't take anything during the negotiation process. Cockrum said they could do anything and he bet a $100 that the employees would lose the benefits if the Union came in.

Michael Standridge recalled that Terry Cockrum talked to the entire shift outside the plant before the first election on November 19, 1999. Cockrum said he thought we would lose our 401(k) if we went union.

Terry Cockrum testified that he told Wayne Christian and Henry Blasingame and several other employees there was a chance they would lose their 401(k) plans if the Union came in. He denied telling the employees they would lose their 401(k) plan if the Union came in. Cockrum was asked about a bet involving 401(k). He agreed that Blasingame said they could not take away their 401(k) and Cockrum replied, "I bet you that I can, and I think it was something like an off-the-wall deal that didn't have nothing to do with money." He admitted that he believed a $100 came up and that he bet $100 that the Company could take the 401(k) if that is what they bargained for."

[1] Respondent admitted all the allegations of par. 5 of the complaint regarding its successor status with Willamette.

[2] The Union filed its petition for an election on October 8, 1999.

[3] Rick Davis was Respondent's general manager at material times. Davis testified that he was in complete charge of the Fort Smith plant.

Cockrum testified he did not recall telling employees they would have an increase in insurance premiums if the Union came in.

Threat of Plant Closure and Loss of Jobs

Mark Horton testified about a conversation involving Terry Cockrum around November 1, 1999. Cockrum threatened the employees about a possible rotating shift. Cockrum also said that Rick Davis had said they could close down the Fort Smith plant and open an Oklahoma City plant if the Union came in or there was a strike.

As shown above, on November 2, Cockrum told employees Blasingame, Christian, Cliff Battles, Shane Doss, Steve Kenny, and Mark Horton about losing their 401(k) and having their insurance premiums increased, that Rick Davis had told him that if the Union came in it was probable they would have a strike and Davis was afraid of violence and he'd just shut down the plant. Wayne Christian testified that Cockrum also said that Rick Davis had said if the employees went on strike he would shut the plant down. Cockrum said that Davis would shut down the plant because he was afraid of violence.

Prohibited Employees From Distributing Union Literature

Threatened to arrest employees if they distributed union literature

Wayne Christian testified that some union representatives were passing out brochures to people going in and out of the plant. Terry Cockrum came up during that day and said that Rick Davis was going to call the cops and that Davis did not want anyone out there hand billing.

Prohibited Employees from Discussing the Union During Nonworking Time in Nonwork Areas

Threatened Employees with Discharge

Threatened employee that work and nonwork activities would be closely monitored

Henry Blasingame attended a meeting held by Tom McIntyre around November 4 or 5, 1999. The next day Terry Cockrum paged Blasingame and said that Rick Davis had said to get Blasingame out of the breakroom. Blasingame was on his break talking to other employees when Cockrum paged him. Cockrum told Blasingame not to be talking about union business on company property. He said that management was watching Blasingame closely and if Blasingame needed anything in the break room to go get in and get the hell out. Cockrum said that if the Union did not get in the plant Blasingame would be the first one out the door.

Threatened Unspecified Reprisals

Christian testified that Terry Cockrum said on November 5 that if the Union goes through there's going to be some people in trouble. Cockrum also said that if the place goes union they are going to arbitrate every case.

Around November 16, 1999, Cockrum paged Blasingame. Cockrum told him to look busy by sweeping around the line and cleaning everything because management was watching Blasingame and he didn't want Rick Davis on his ass. Cockrum told Blasingame that he definitely did not want Davis on his ass.

Threatened Physical Harm

On October 6, 1999, Christian overheard Cockrum talking in the slitter control room. Christian, Cliff Battles and Cockrum were present. Cockrum said that the Arkansas right-to-work law gave him the right to run over a person that was picketing or he could shoot them dead.

Early in November 1999 Terry Cockrum told employees including Blasingame that if they were out hand billing at the gate or during a strike they were out picketing, he had the right to run over or shoot the employees.

Mark Horton testified that around November 1, 1999, Terry Cockrum said that if the employees went on strike he had a right to come to work and could run over and shoot the employees and it would be legal because Arkansas was a right-to-work state.

During mid-November, November 22, 1999, April 22, 2000, Threatened Adverse Changes in Working Conditions

May 2, 2000, threatened day shift that Respondent would adversely change work schedules

Mark Horton testified about a conversation involving Terry Cockrum around November 1, 1999. Cockrum said that the employees needed to kind of let this blow over or you may possibly go to a rotating shift. Cockrum said the guys up front were saying that. The next day Cockrum offered to bet Henry Blasingame $100 they would go to a rotating shift if it didn't die down.

Horton recalled that after the first election Cockrum told them they were lucky this thing did not go through because they would be going to a rotating shift.

On Monday, November 22, the first weekday after the first election, Clifton Battles overheard a conversation between Terry Cockrum and Steve Doss. Cockrum told Doss they were going to a rotating shift and lose benefits because of the Union. Terry Cockrum mentioned that the front office was mad because of the Union. Later that same day, Battles heard Cockrum say that the employees were lucky they had not gone union. He said that if they had gone union they would go to a rotating shift and lose rates and benefits.

Wayne Christian testified that on Monday after the first election, Terry Cockrum said, "you boys are lucky you didn't go union or Rick Davis would have put you on a rotating shift." Clifton Battles overheard Terry Cockrum tell Wayne Christian that Mark Horton was crazy and that Cockrum could not understand why Horton was voting for the Union because he was going to go on rotating shifts and would lose benefits.

On November 22, 1999, Terry Cockrum came in the slitter control room where Blasingame, Christen, Battles, and Horton were present. Cockrum told Christen that it was a good thing they did not get the Union in because Rick Davis said that Christian was going to a rotating shift.

Some time after the first election Christian overheard Terry Cockrum say they were going to a rotating shift and the Company wanted to show the people who was in charge. Christian testified the second election was a 50/50 split and on May 2, he

asked Cockrum why the corrugator crew was singled out. Cockrum said because the corrugators were 100 percent union and the crew was being ram-butted.

Around May 2, 2000, according to Blasingame, Cockrum came in the control room. Christen and Shane Doss were in the control room with Blasingame. Cockrum said that Rick Davis had told him that if they keep trying to get the Union in, they were going to rotating shifts. Cockrum said that he had told the employees that was going to happen. Christian asked why in view of the fact that 50 percent of the plant had voted for the Company. Cockrum replied that 100 percent of their crew voted for the Union and you all are going to get ram-butted for it.

Terry Cockrum admitted that he told employees they would go to a rotating shift but he denied he denied telling them they would go to a rotating shift if the Union came in. Cockrum admitted that he probably told the employees on the first shift that Rick Davis was mad about the union campaign. He denied telling the employees they were going on a rotating shift because Davis was mad.

Findings

Credibility

Here, and with all credibility determination, I have considered demeanor of witnesses and the full record. I do not credit the testimony of Terry Cockrum to the extent it conflicts with credited testimony. Cockrum was evasive in some of his responses. Nevertheless he did admit that he make comments similar to some of those alleged as unfair labor practices. I found the testimony of Wayne Christian, Michael Standridge, Henry Blasingame, Mark Horton, and Clifton Battles was credible. The testimony of those witnesses conflicted with that of Cockrum and contributed to my determination that Cockrum was not believable.

Conclusions

The above-mentioned testimony shows that Terry Cockrum repeatedly threatened employees on, before and after November 1, 1999, that they would lose their 401(k) retirement plan and that their insurance premiums would go up if the Union was selected as bargaining representative. Cockrum made those comments to employees Henry Blasingame and Wayne Christian, in October.[4] On November 1 and then again on November 2, Cockrum repeated to several employees in the slitter control room that the employees would lose their 401(k) plan and their insurance premiums would increase if they went Union. On November 2 Cockrum offered to bet employee Henry Blasingame $100 that Blasingame would lose his 401(k) if the Union got in. During that same conversation Cockrum promised Blasingame he would lose his 401(k) if the Union got in. Around November 6, Cockrum threatened Henry Blasingame that his work and nonwork activities were being closely monitored.

On November 19, Cockrum threatened the entire first corrugator operators they would lose their 401(k) if the Union came in.

On November 1 and 2, Cockrum threatened employees that Rick Davis would shut down the plant if the employees went out on strike.

Around November 3 Cockrum threatened to call the police about the union hand billing at the plant. Shortly after November 4 or 5 Cockrum threatened employee Blasingame that he would be the first one out the door if the Union did not get in; that management was watching him and he was not to discuss the union on company property.

Cockrum threatened employees on November 5 that some of the employees would be in trouble and that the Company was going to arbitrate every case, if the Union went in.

In early November Cockrum threatened employees that he had the right to run them over and shoot employee picketing at the gate them under the Arkansas right-to-work law.

On several occasions in November and on May 2, 2000, Cockrum threatened first-shift corrugator employees they would go on a rotating shift because they were trying to get the Union in.

After the February 11, 2000 election, Wayne Christian overheard Terry Cockrum say they were going to a rotating shift and the Company wanted to show the people who was in charge. Christian testified the second election was a 50/50 split and on May 2, he asked Cockrum why the corrugator crew was singled out. Cockrum said because the corrugators were 100 percent Union and the crew was being ram-butted.

I find Cockrum's numerous threats and other comments shown above constitute violations of Section 8(a)(1) of the Act.

Area Resources Manager Tom McIntire

Wayne Christian testified that Tom McIntire held meetings with employees at the plant from the beginning of the union campaign. Christian attended a meeting with McIntire along with other employees. During the meeting McIntire said "union, no 401(k) and nonunion, 401(k)." McIntire said that union plants don't have 401(k) plans.

Tom McIntyre was Willamette human resources manager for southern and eastern divisions during the union campaigns. He testified that he met with groups of employees during that campaign. He agreed that he held meetings on November 1 and 4 1999. He used prepared remarks on those occasions (R. Exh. 13). McIntyre denied saying that union strikes are inevitable or that it was futile to vote for the Union because there would be a strike.

Threat of Loss of Pension Benefits

Threat that it would be futile to select the Union

Steve Tyler and other employees attended a meeting on October 4, 1999 along with Management Officials Rick Davis, Tom McIntyre, Rick Hicks, and Kay Shearer. McIntyre spoke to the employees. He said that no union plant of Willamette had a 401(k) plan but that all nonunion Willamette plants had 401(k) plans. Another meeting was held where McIntyre spoke about a week later. During one of McIntyre's several meetings, he mentioned a plant in Indianapolis where the employees had

[4] The pre-November comments are not alleged as unfair labor practices.

a 401(k) plan and voted in a union. After that the parties agreed to a contract and the 401(k) plan was eliminated. Then in the third meeting McIntyre told about a plant Willamette had purchased from Boise Cascade where there was a union. Willamette wanted to start drug testing and the Union opposed drug test. Willamette went ahead and tested the employees for drugs. McIntyre explained that the union could do nothing to prevent the Company from testing for drugs.

Tom McIntyre admitted that he spoke to employees about 401(k) plans. In addition to his comments included in Respondent Exhibit 13, McIntyre followed the text contained in a writing prepared by the corporate labor relations manager (R. Exh. 14). He also admitted discussing rotating shifts with management at Fort Smith. McIntyre referred to a three-shift plant used by a Saturn plant (R. Exh. 6).

Threat that a strike was inevitable

At a November 4 or 5 meeting Tom McIntyre told employees they would probably go on strike if the Union were elected because the Company would not give up what the Union wanted.

Tom McIntyre admitted that he spoke to employees and his comments were included in Respondent Exhibits 13 and 14.

Findings

Credibility

I found Tom McIntyre to be a forthcoming nonevasive witness. Additionally, I note that comments he admittedly made to employees at Fort Smith were similar to those recalled by the witnesses for General Counsel. On the basis of the full record I am convinced that McIntyre testified truthfully regarding his use of Respondent Exhibits 13 and 14 during his meetings at Fort Smith.

Conclusions

As to the allegations that McIntyre threatened employees with loss of pension benefits and that it would be futile to select the Union, I find that he did make comments regarding those issues as set forth in Respondent Exhibits 13 and 14.

In regard to the question of whether McIntyre threatened it would be futile to select the Union and that a strike would be inevitable, I note that he did discuss the possibility of strikes if the Union was selected. At the start of his prepared remarks (R. Exh. 13), McIntyre commented, "I've said it before, with a union there is always the risk of a strike." He then went on and referred to strikes in Fort Smith with Rheme and Southwest Glass. He also showed the employees a film regarding union strikes. McIntyre referred to strikes at Willamette and he showed letters and newspaper articles that supported his comments regarding Willamette strikes. He also stated that employees are responsible for the maintenance of their group insurance during a strike.

As to whether McIntyre threatened loss of pension benefits, the credited testimony showed that he relied on Respondent Exhibit 14. Among other things, that document shows four "facts" regarding 401(k) plans:

> 1. Nonrepresented facilities have a 401(k) plan as part of their benefit package.
>
> At the present time, no union contract at Willamette includes a company sponsored 401(k) plan.
>
> 2. Like other benefits, 401(k) plans are negotiable in any represented facility. Unions and the company at all Willamette's represented facilities have together chosen to agree to other things instead of a company sponsored 401(k) plan.
>
> 3. The company has not and will not make any predictions (which may be argued by someone to be a promise) about a 401(k) plan at this facility depending on the outcome of the election.

The credited evidence failed to show that McIntyre made comments to employees that constituted unfair labor practices. McIntyre told the employees that only union plants among Respondent's facilities did not have 401(k) plans for unit employee. On the other hand all plants where the employees were not represented did have 401 (k) plans for unit employees. There was no evidence that McIntyre was inaccurate in those comments.

The 8(a)(3) Allegations

Warned Mark Standridge

Mark Standridge has worked for Respondent for 20 years. At one time he was permitted to smoke at his workstation. Then he was told to smoke outside. However, he was not assigned break times to smoke. Instead he was permitted to smoke whenever his workload permitted. Standridge was an open union supporter. He wore union shirts and hand billed for the Union.

A few days after the first election on November 19—on November 24, 1999—Standridge came in at 5 a.m. He took a smoke break at the back dock near his workstation at about 5:10 or 5:15 a.m. after he got his machine up and running and had checked to see that everything was okay. Brent Carson was also on break at that time and he subsequently returned to his workstation. During that break Standridge was actually standing inside the back door. He stayed there for about 5 minutes.

Later while working, Standridge noticed that Steve Sharpe was standing inside the door smoking. He was caught up on his work and took a second break to smoke and talk with Sharpe. Standridge testified that normally under the circumstances present at that time, he was permitted to take another break whenever his workload permitted. Standridge was given a warning that day by Terry Cockrum. Cockrum told Standridge that he needed to be careful because he had influence of other younger people on the corrugator crew. Standridge was taken to Rick Hicks's office and Hicks, Cockrum and Standridge were present. Rick Hicks also said that Standridge had influence on younger corrugator people. Standridge testified that he had been talking to the younger people on corrugator crew, about the Union. That was the first warning Standridge received while working for Willamette.

Terry Cockrum testified that he verbally "wrote down" Mike Standridge. He identified Respondent Exhibit 1,[5] which is dated November 23, 1999, as the writing he gave Standridge on that

[5] During the hearing I failed to receive R. Exh. 1. Respondent offered that exhibit and it was identified. Therefore, I hereby receive R. Exh. 1.

occasion. Cockrum saw Mike Standridge sitting talking with another employee in a small smoking area at the back drinking fountain abut 5:05 a.m. Forty-five minutes later Cockrum saw that Standridge was smoking with another employee there in that same smoking area.

Findings

Credibility

Among other things Terry Cockrum's testimony is inconsistent with the warning or writeup issued to Standridge. Cockrum testified to the effect that Standridge took a long smoke break without attending to his work. However, other evidence including the writeup shows that Standridge took two smoke breaks within a short period of time. As shown above I did not credit Cockrum's testimony regarding other unfair labor practice allegations and I do not credit his testimony here. I do credit the testimony of Mark Standridge in view of his demeanor and the entire record.

Conclusions

The credited testimony of Mark Standridge shows that he was treated differently than he had been treated prior to the union campaign, after it became known that he supported the Union. Standridge took two smoke breaks on November 24 after insuring that he could take those breaks without interfering with his productivity. Prior to that time he had taken similar breaks and had never been disciplined. There was no showing that other employees were disciplined for similar activity. Respondent was aware of Standridge's union activities in view of his open activity including wearing union shirts and hats. Moreover, Cockrum implied that Standridge's influence with younger employees played a part in the decision to award him the November 24 writeup and Standridge had talked to younger employees about the Union on occasions before November 24. I find that General Counsel proved that Respondent was motivated by its union animus to writeup Mark Standridge. *Manno Electric*, 321 NLRB 1 fn. 12 (1996); *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

There was no evidence that Respondent would have written up Standridge in the absence of his union activities. Therefore, I find that Respondent engaged in unfair labor practices by writing up Standridge on November 24, 1999.

Warned Henry Blasingame

Respondent currently employs Henry Blasingame. As shown above Blasingame was in the slitter control room around November 1 and 2 where he heard Terry Cockrum threatened that the employees would lose their 401(k) plan and their insurance premiums would increase if the Union came in. On one occasion Blasingame replied to Cockrum that he understood that the Company couldn't take anything during the negotiation process. Cockrum said they could do anything and he bet Blasingame $100 that we would lose the benefits if the Union came in. Terry Cockrum said that Rick Davis had told him that if the Union came in it was probable they would have a strike and Davis was afraid of violence and he'd just shut down the plant.

Blasingame attended a meeting held by Tom McIntyre around November 4 or 5, 1999. The day before that meeting Cockrum paged Blasingame and said that Rick Davis had said to get Blasingame out of the breakroom. Blasingame was on his break talking to other employees when Cockrum paged him. Cockrum told Blasingame not to be talking about union business on company property. He said that management was watching Blasingame closely and if Blasingame needed anything in the breakroom to go get in and get the hell out. Cockrum said that if the Union did not get in the plant Blasingame would be the first "mother f–ker" out the door.

Early in November 1999 Terry Cockrum told employees including Blasingame that if they were out hand billing at the gate or during a strike they were out picketing, he had the right to run over or shoot the employees.

Around November 16, 1999, Cockrum paged Blasingame. Cockrum told him to look busy by sweeping around the line and cleaning everything because management was watching Blasingame and he didn't want Rick Davis on his ass. Cockrum told Blasingame that he definitely did not want Davis on his ass.

Blasingame received a written warning around March 21, 2000 (R. Exh. 16). Terry Cockrum gave Blasingame the warning and Cockrum said Blasingame was receiving the warning because he supported the Union. Blasingame went to Steve Layes and complained about the warning. Layes told him that normally since Blasingame had a doctor's excuse nothing would happen but he was warned since he was a strong union supporter and they weren't going to give him any slack.[6]

Findings

Credibility

As shown above I credit the testimony of Blasingame and I do not credit the testimony of Terry Cockrum. Nor do I credit the testimony of Steve Layes. Layes testified that he did not tell Blasingame that he would not have given him a warning but for the fact that Blasingame was such a strong supporter of the Union. As shown above, I find Blasingame to be a credible witness. His testimony was supported by other testimony and I was impressed with his demeanor. Therefore, I credit the testimony of Blasingame and do not credit the conflicting testimony of Cockrum and Layes.

Conclusions

In view of the credited evidence I find that Respondent was aware of Henry Blasingame's union views including his and other members of the first shift corrugator crew wearing union shirts on the day of the first election—November 19, 1999. Moreover, as shown above, Blasingame was involved in several discussions with Terry Cockrum where Blasingame openly support the Union. Cockrum threatened Blasingame because of his union activities including a threat that because of his union activities Blasingame would be the first one out the door if the

[6] Layes was asked if he had a conversation with Blasingame after he gave him his warning and he answered that he was sure he did. Layes denied that he told Blasingame that he normally would not award the waning but was since Blasingame was such a strong supporter of the Union.

Union were not elected. I find that General Counsel proved that Respondent was motivated by union animus in warning Blasingame on March 21, 2000. In view of the entire record and especially credited testimony showing that Terry Cockrum and Steve Layes told Blasingame he was receiving the warning because of his support of the Union, I find that Respondent failed to prove that Blasingame would have been warned in the absence of his union activity. Among other things Respondent failed to show how Respondent's absenteeism practice before the warning differed from instances that it routinely tolerated until the union organizing campaigns. See *Manno Electric*, 321 NLRB 1 fn. 12 (1996); *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

Adversely Changed Work Schedules in June 2000:

There is no dispute but that Respondent placed all its corrugator operators on rotating shifts on June 26, 2000. Prior to that date Respondent had never used rotating shifts for nonsupervisory employees. Immediately before June 2000 Respondent used two shifts. Each shift ran 10 hours each day and overtime was used as needed. One shift ran days and the other nights with no rotation. After June 26 Respondent ran three shifts of six 10-hour days. The three shifts rotated so that no one crew worked exclusively day or night shifts. That change to rotating shifts affected the pay and hours of employees including the first-shift corrugator employees. Wayne Christian testified that the corrugator crew lost 10 hours overtime and each week and they lost shift preference seniority, by being placed on rotation.

As shown herein, there was evidence showing that from before the first election, the first shift corrugator crew fully supported the Union, Respondent knew of that support and Respondent made several threats to place the first-shift corrugator operators on rotating shift if the Union came in.

Steve Tyler was the union observer at the first election. He noticed that employees including all the employees on the first shift-corrugator crew wore union shirts. None of the first-shift corrugator crew employees failed to wear a union shirt. Michael Standridge testified that all the first-shift corrugator employees wore black union T-shirts on the day of the first election (i.e., November 19, 1999).

As shown above, on several occasions Terry Cockrum threatened first-shift corrugator employees with being placed on a rotating shift due to their union support.

Mark Horton testified about a conversation involving Terry Cockrum around November 1, 1999. Cockrum said that the employees needed to kind of let this union blow over or you may possibly go to a rotating shift. Cockrum said the guys up front were saying that. The next day Cockrum offered to bet Henry Blasingame $100 they would go to a rotating shift if it didn't die down.

On May 2 after Cockrum said the employees were going on a rotating shift if they continued trying to get the Union in, Wayne Christian asked why in view of the fact that 50 percent of the plant had voted for the Company. Cockrum replied that 100 percent of their crew[7] voted for the Union and you all are going to get ram-butted for it.

Terry Cockrum admitted that he told employees they would go to a rotating shift[8] but he denied telling them they would go to a rotating shift if the Union came in. Cockrum admitted that he probably told the employees on the first shift that Rick Davis was mad about the union campaign. He denied telling the employees they were going on a rotating shift because Davis was mad. He also denied telling employees they had been ram-butted.

Findings in Regard to General Counsel's Case

Credibility

As shown above I do not credit the testimony of Terry Cockrum to the extent it conflicted with credited evidence. I credit the testimony of Steve Tyler, Michael Standridge, Mark Horton, and Wayne Christian in consideration of demeanor and the full record.

Conclusions

The credited evidence shows that corrugator employees engaged in union activities; that Respondent knew of those union activities and that Respondent illustrated strong union animus. As to the activity of the corrugator employees the record shows that the first-shift corrugator employees were all union supporters and Respondent had reason to believe they were 100 percent involved in that effort. That evidence included evidence that all the first-shirt corrugator employees wore black union T-shirts on the day of the first election.

Respondent repeatedly threatened it employees with reassignment to a rotating shift because of the Union and Respondent reassigned employees including its first-shift corrugator employees, to a rotating shift. Also as shown above, from about the time of the filing of the petition for an election with the NLRB in October 1999 Respondent started consideration of a rotating shift and Terry Cockrum started threatening first shift corrugator employees that Respondent would place them on rotating shift if the Union was elected. Wayne Christian testified about conversations with Cockrum beginning on October 1, 1999 in which, among other things, Cockrum threatened employees with loss of benefits because of the Union. On October 6 Cockrum threatened that he had the right to run over or shoot picketing employees that blocked the way into the plant. Cockrum continued to make threats to employees.

The first election was held on November 19 and it appeared that the Union had failed to receive a majority of the votes. Terry Cockrum told first shift corrugator employees that it was a good thing the employees did not vote in the Union because Wayne Christian would go to a rotating shift.

However, challenged ballots were sufficient in number to affect the election results and the Union filed objections. On December 21 the parties agreed to hold a second election.

At the second election on February 11, 2000, the Union received 56 votes. There were 51 votes against the Union and

[7] Their crew was the first shift corrugator operator crew.

[8] It was never shown how Cockrum learned about Respondent's plans for rotating shifts.

there were 5 challenged ballots. Challenged ballots were sufficient to affect the election results and Respondent filed objections.[9] A hearing was held on the challenged ballots and objections on March 25, 2000.

In March Respondent announced that it would start rotating shifts for its corrugator employees. However, rotating shifts were not implemented at that time.

Around May 2 Terry Cockrum told some first-shift corrugator employees they were going on a rotating shift if they continued trying to get the Union.

On June 23 the hearing officer's report issued showing that two challenges should be sustained and Respondent's objections should be overruled. Therefore, there was strong reason at that moment to believe that the Union had won the February election.

On June 26 Respondent implemented rotating shifts for corrugator employees.

As shown above several first-shift corrugator employees testified and I credited their testimony. Their testimony showed that while on the first-shift corrugator employees routinely worked 50 to 60 hours a week. The reassignment to rotating shift resulted in a loss to each employee of from 10 to 20 overtime hours each week plus any benefits from seniority for shift preference purposes.

In view of the entire credited record I agree with General Counsel. I find that Respondent was motivated by its union animus to reassign employees to a rotating shift on June 23, 2000. *Manno Electric*, 321 NLRB 1 fn. 12 (1996); *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

Respondent's defense:

I shall also question whether Respondent would have reassigned its employees to a rotating shift in the absence of union activity. Respondent argued that it was faced with a high level of business in 1999 along with the fact that it was already using extensive overtime. In October 1999 Respondent viewed its 5-year plan (R. Exh. 4) as requiring an increase in production because it forecast significant increase in business, mostly from Anheuser Busch.

In order to increase production Respondent decided to purchase a new Flexo machine, which was more appropriate for the work performed in the facility. Respondent pointed to an AFE (appropriation for expenditure) showing the plan to purchase the Flexo machine for over a $1 million (R. Exh. 5). The Flexo machine was to be down line from the corrugator but its anticipated increased efficiency was thought to require more production from the corrugator.

In view of the fact that the existing two shifts were already putting in extensive overtime work and Respondent had received some complaints about that extensive overtime from employees and spouses of employees, Respondent looked to other avenues to increase corrugator production.[10]

Respondent contended in a letter to the Regional Office of the NLRB, that its corrugator operations consisted of 2 shifts before the change in the summer of 2000 (GC Exh. 8). Each shift was assigned work of 8 hours per day for "five days a week, and on Saturdays as business demanded."

However, as shown above, other evidence showed that it was the routine practice for each of the two shifts to operate five or six 10-hour days a week. That produced at least 100 production hours from each job over a 1-week period.[11]

If Respondent had added a third shift and employed a straight three-shift operation of 8 hours, 5 days a week, it would produce 120 production hours per job. Of course it would not be possible to employ three 10-hour shifts during a 24-hour day.[12] A straight non-rotating schedule would be limited to shifts of 8 hours each if each respective shift maintained the same working hours each day.

The testimony regarding 10-hour versus 8-hour shifts, was to the effect that the Company's experience with 8-hour shifts had not been good. Rick Hicks testified that Respondent had run three 8-hour shifts once, maybe twice before, probably in the early 1990's and had learned that the corrugator had always produced more efficiently running two 10-hour shifts.

It is noteworthy that Hicks's testimony is contrary to statements in Respondent's position letter (R. Exh. 8). There Respondent contended that it had been using an 8-hour shift up until it converted to a three-shift operation in 2000. Therefore, if as Respondent contended in its position letter it was using 8-hour shifts, it operated on an inefficient basis in the view of Rick Hicks, until June or July 2000.[13]

In his testimony at the hearing, Rick Hicks stated that production went down during the occasions when Respondent used 8-hour shifts.[14] Hicks admitted those drops in production were probably due to some inexperience. However, he also pointed out that 8-hour shifts left no down time for clean up and maintenance on the corrugator machine. In view of my determination as to Hicks's credibility, I am not convinced that 8-hour shifts were inefficient.

Tom McIntyre suggested to Respondent and submitted a three–shift plan used at a Saturn plant (R. Exh. 6). That plan

[9] The objections were filed on February 18, 2000.

[10] However, the appropriation for expenditure (R. Exh. 5) showing a request for the purchase of the Flexo machine was dated November 17, 1999. That was over 2 months after Respondent started its consideration of using three rotating shifts.

[11] The formula used is 2 (representing two employees, one from each shift) times 50 (representing the number of preassigned hours each of the two employees worked each week).

[12] Before June 26 Respondent used available downtime from 1 to 5 a.m. each day (i.e., 4 hours when the two shifts worked 10 hours each), for maintenance and cleanup.

[13] In that regard I am convinced that Hicks was not completely candid in his testimony regarding at least one of the reasons why Respondent changed to rotating shifts of 10 hours each. I do not credit his testimony to the effect that Respondent had discovered in the early 1990s that 8-hour shifts were inefficient.

[14] Despite Hicks's testimony Respondent's position letter (GC Exh. 8) stated that Respondent was using 8-hour shifts until it changed to rotating shifts. In other words Respondent was using two 8-hour shifts throughout 1999 and the first two quarters of 2000. Respondent's summary of its productivity (R. Exh. 11) shows that productivity improved throughout the time from the beginning of 1998 until the end of the 4th quarter of 2001.

called for each of three shifts to work six successive workdays[15] on either the day or night shift, then, after a break of some days, to work the alternate shift of night or day for six consecutive workdays.[16] Respondent decided to use the Saturn plan and it was implemented on June 26, 2000.

Findings

Credibility

There are several reasons why I must question the credibility of Respondent's evidence tending to show that it would have gone to a rotating shift in the absence of union activity. In that regard I shall examine what, if any, consideration should be given to the fact that employees were being threatened with rotating shift if they continued to support the Union, at the very time that Respondent was actually considering a rotating shift. As shown above the evidence illustrated that Respondent began its consideration of rotating shifts some time before mid–October 1999. Shortly thereafter Terry Cockrum was threatening employees with rotating shifts if they did not let the union matter blow over. In view of that evidence I shall examine all Respondent's arguments and its evidence carefully in determining credibility and I shall make those findings as required below.

Moreover, as shown above, I do not credit disputed testimony by Rick Hicks in view of conflicts in his testimony and Respondent's statement of position to the NLRB regional office.

Additionally, in regard to credibility I am also concerned by Respondent's failure to show that it exhausted all courses of action in consideration of its alleged objective of working no more than 20 hours each day in order to provide some down time for the corrugator machine. The record showed that Respondent only considered the "Saturn" plan for three shifts.[17]

Conclusions

Respondent argued that it established the third shift for legitimate reasons. However, it appears from the record that the addition of a third shift was never the issue. Instead both the threats to employees and the allegation that it "adversely changed the working schedules of employees," concerned going to rotating shifts. There was no showing that Respondent ever threatened to "add another shift" if the employees continued to support the Union. Therefore, I reject that argument by Respondent.

Nevertheless, even if I should consider whether Respondent proved that it implemented a third shift for legitimate reasons, that evidence is not without dispute. For example if one considers cost, production and productivity, there is a serious question of whether Respondent proved that it would have implemented a third shift in the absence of its employees' union activities. As to cost, there was no showing that Respondent anticipated the addition of a third shift would be less costly than its two–shift operation. Nothing was offered to show how the question of cost figured in Respondent's alleged calculations.

As to production, Respondent's Exhibit 10 showed that it suffered a decline in production during the next two quarters after implementing a third corrugator machine shift at the end of June 2000.

In regard to productivity Respondent's Exhibit 11 showed that it experienced a steady improvement in productivity from the first quarter of 1998 until it decided to add a third shift to the corrugator line in March 2000. From March 2000 throughout the third quarter of 2000, productivity declined.

Therefore, I find that Respondent did not prove it would have added a third shift on June 26, 2000, in the absence of the union organizing campaign.

In consideration of the question of would Respondent have implemented rotating shifts for all corrugator employees in 2000, Respondent argued that following its decision to add a third shift, the question it then faced was whether it should employ three fixed shifts of 8 hours each or whether it should implement a rotating shift. Respondent used the term rotating shift to mean three rotating shifts and it argued that it decided on rotating shift in order to allow 4 hours' downtime on the corrugator machine each 24-hour period for cleanup and maintenance and to reduce overtime. In other words it decided to maintain two 10-hour shifts each 24-hour period rather than go to three 8-hour shifts each 24-hour period. Respondent also decided on a regular 6-day week with Sundays off.

Apparently Respondent then ignored any question of different alternatives for consideration in maintaining its two 10-hour shifts and reducing overtime. Instead it simply looked in one direction and that was the direction it had been threatening to employ since November 1999. Respondent failed to show that it could not have maintained its 10-hour shift and reduced overtime by adding a third shift, without going to a three-shift rotation. For example Respondent failed to show why it could not have used a 6-day workweek, with all Sundays off, and rotated only the newly implemented third shift on both day and night shift times.

Instead Respondent argued that it was inexperienced and that its actual experience in using 8-hour shifts had not been good. Therefore, it adopted Tom McIntyre's suggestion to use the Saturn automobile plan of rotating shifts. It implemented the Saturn plan apparently without consideration to its extended period of threats to do exactly what it now planned regarding rotating shifts for corrugator employees and it apparently implemented that plan without considering any alternative plans.

Respondent argued that when it implemented its rotating shifts, it gave only business related reasons to its employees for the use of that system. However, by that same token, there was no showing that Respondent ever expressed to employees that their union activity had nothing to do with implementation of rotating shifts for corrugator employees.

Respondent argued that the three rotating shifts were actually beneficial to employees by reducing onerous overtime. However, even if I accept that a reduction in overtime in this instance was beneficial to all the corrugator employees, there was no showing that the other side of the coin (i.e., other consequences such as continuous changes from day to night work)

[15] Workdays were considered all days each week other than Sunday.

[16] Under that three-shift plan, no more than two shifts would work on any given day.

[17] There was also reference to four shifts in R. Exh. 7. However, from that document and the full record it appears that Respondent never gave serious consideration to a four-shift operation.

was also beneficial. In fact there was a showing that some, if not all, the effects of rotating shifts adversely changed working conditions. Moreover, Respondent's argument failed to address the problem presented by General Counsel. In effect General Counsel complained that not only did Respondent adversely change working schedules but also it did so after it had made several threats to employees to make those exact changes because of its employees' union activities.

Respondent argued that Terry Cockrum's threats did not transform its lawful decision to go to three rotating shifts from a legal to an illegal action. In that regard it argued that Cockrum's comments were unbelievable. However, despite some extreme comments from Cockrum such as he had the right to run over and shoot any picketing employee, the record failed to show that all Cockrum's comments were unbelievable. In fact just the opposite was shown as to rotating shifts. The record proved that Cockrum was making threats about rotating shifts at the very time Respondent was considering doing just that. Moreover, there was no showing that Cockrum's comments about other consequence including for example, loss of 401(k) and increased insurance premiums were unrealistic or unbelievable. Therefore, even if I should conclude that his comments regarding what he could legally do to a picketing employee were unbelievable, and I do not make such a finding, there is nothing in the record to show that the material threats, (i.e., threats regarding rotating shifts) were unbelievable.

Respondent argued that Cockrum's threats did not reflect the Company's motives in that Cockrum had no role in changing to rotating shifts and that Cockrum was speaking on his own in that regard. However, the evidence showed otherwise. Even though Cockrum was not in Respondent's management, he was an admitted supervisor and he apparently had some knowledge of Respondent's planning regarding rotating shifts. Otherwise, it is a remarkable coincidence that he started threatening rotating shifts at almost the exact time Respondent formalized its consideration of rotating shifts, and his threats extended until Respondent actually implemented rotating shifts. I am not convinced that Cockrum's threats did not reflect Respondent's motives. Moreover, I see nothing in the record, which convinced me that the employees should have known Respondent's motives were lawful.

Respondent cited the testimony of Mike Standridge. However, that testimony showed that Standridge was testifying as to what he was told by Respondent as to its reason for going to a rotating shift. Mark Horton brought up with Rick Davis, Terry Cockrum calling him a liar and Respondent argued that showed that Horton was not troubled by Cockrum's rotating shift threats. Respondent argued that Henry Blasingame was not troubled by Cockrum's rotating shifts threats because he spoke to Rick Davis about no solicitation. I am unable to agree with Respondent and I find that neither Standridge, nor Horton, nor Blasingame's testimony showed that any of those employees were unconcerned with Cockrum's threats regarding rotating shifts.

I do not agree with Respondent that this is a proper question to apply the rule from ***Bourne v. NLRB***, 332 F.2d 47, 48 (2d Cir. 1964). However, as in *Bourne*, I have considered the totality of the circumstances and I am convinced that it does show a violation of Section 8(a)(3) by Respondent's implementation of three rotating shifts. I find that Respondent was motivated by its animus in implementing rotating shifts and the record did not show Respondent would have implemented rotating shifts in the absence of its employees' union activities.

Therefore, I find the record failed to prove that Respondent would have added a third shift and the record failed to prove that Respondent would have gone to a three shift rotation, in the absence of its employees' union activities. In that regard I have also considered the arguments advanced in Respondent's brief and find that none of those arguments show that Respondent would have added a third shift or gone to rotating shifts in the absence of its employees' union activities.

I find that Respondent engaged in conduct in violation of Section 8(a)(1) and (3) by going to rotating shifts on June 26, 2000.

CONCLUSIONS OF LAW

1. By threatening its employees with loss of their 401(k) retirement plan, with increased insurance premiums, by offering to bet its employee that he would lose his 401(k) retirement plan, by threatening its employee that his work and nonwork activities were being closely monitored and watched by management, that the plant would be shut down if the employees went out on strike, that it would call the police if the Union hand billed, that its employee would be the first one out the door if the Union did not get in, that some of the employees would be in trouble and Respondent was going to arbitrate every case if the Union got in, that its supervisor had the right to run over and shoot employees if they picketed, and threatening that its corrugator employees would go to a rotating shift, because of its employees' union activities; the Respondent, Willamette Industries, Inc. and Weyerhaeuser Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By counseling or warning its employees Mark Standridge and Henry Blasingame and by adversely changing its working schedules of corrugator employees, because of its employees' union activities, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully warned its employees Mark Standridge and Henry Blasingame, I recommend that Respondent be ordered to remove all record of those unlawful warnings, to avoid use of those records and to inform Standridge and Blasingame in writing that it has removed those records of their warnings and that it will not use those records against them.[18]

[18] It appears from the brief that General Counsel does not seek restoration of Respondent's former fixed shifts nor does General Counsel seek a make whole remedy.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[19]

ORDER

The Respondent, Willamette Industries, Inc. and Weyerhaeuser Company, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening its employees with loss of their 401(k) retirement plan, because of its employees' union activities.

(b) Threatening its employees with increased insurance premiums, because of its employees' union activities.

(c) Offering to bet its employee that the employee would lose his 401(k) retirement plan, because of its employees' union activities.

(d) Threatening its employees that employee's work and nonwork activities are being closely monitored and watched by management, because of its employees' union activities.

(e) Threatening its employees that the plant would be shut down if the employees go out on strike, because of its employees' union activities.

(f) Threatening its employees that it will call the police if the Union hand billed, because of its employees' union activities.

(g) Threatening its employees that its employee will be the first one out the door if the Union did not get in, because of its employees' union activities.

(h) Threatening its employees that some employees will be in trouble and Respondent was going to arbitrate every case if the Union got in, because of its employees' union activities.

(i) Threatening its employees that its supervisor had the right to run over and shoot employees if they picketed at its gate, because of its employees' union activities.

(j) Threatening its employees that its corrugator employees will go to a rotating shift, because of its employees' union activities.

(k) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings issued to Mark Standridge and Henry Blasingame, and within 3 days thereafter notify Standridge and Blasingame in writing that this has been done and that the warnings will not be used against either of them in any way.

(b) Within 14 days after service by the Region, post at its facility or office in Fort Smith, Arkansas, copies of the attached notice marked "Appendix."[20] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. April 21, 2003

APPENDIX

Notice to Employees
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT threaten you with loss of your 401(k) retirement plan if you support Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, CLC or any other labor organization.

WE WILL NOT threaten you with increased insurance premiums if you support a union.

WE WILL NOT offer to bet our employees they would lose their 401(k) retirement plan if they select a union as their bargaining representative.

WE WILL NOT threaten to closely monitor your work or nonworking activities because of our employees' union activities.

WE WILL NOT threaten that the plant will be shut down if the employees go out on strike.

WE WILL NOT threaten to call the police if the Union hand bills at our facility.

[19] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[20] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT threaten our employee that he or she will be the first one out the door if the Union is not selected as our employees' bargaining representative.

WE WILL NOT threaten you that some employees will be in trouble and that we will arbitrate every case if the Union is elected.

WE WILL NOT threaten that our supervisor has the right to run over and shoot anyone picketing at our facility.

WE WILL NOT threaten that our corrugator employees will be placed on a rotating shift if the Union is elected.

WE WILL NOT warn or otherwise discriminate against any of you because of your union activities.

WE WILL NOT change working conditions of our employees because of their protected concerted activities or because of their involvement in unfair labor practice charges.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful warnings to Mark Standridge and Henry Blasingame and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the warnings will not be used against them in any way.

WILLAMETTE INDUSTRIES, INC. AND WEYERHAEUSER COMPANY